

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

THE UNITED STATES for the use of)
GMW Fire Protection, Inc., an Alaska)
Corporation,)

Plaintiff,)

vs.)

KANAG'IQ CONSTRUCTION CO.,)
INC., an Alaska Corporation, and)
WESTERN SURETY COMPANY, a)
South Dakota Corporation,)

Defendants.)

Case No. A05-170 CI (TMB)

**DEFENDANTS' PROPOSED SUPPLEMENTAL RESPONSE TO
PLAINTIFF'S REQUEST FOR ISSUANCE OF WRIT OF EXECUTION**

Defendants, KANAG'IQ CONSTRUCTION CO., INC. and WESTERN SURETY COMPANY, though their counsel Eide & Gingras, P.C., hereby supplement their opposition to Plaintiff's Request for Issuance of Writ of Execution [Docket 197].

The basis for the opposition is that the requested writ of execution is based upon a judgment which is in error. In the Court's Order dated August 6, 2008 [Docket 192] the Court granted the Motion to Alter or Amend the Judgment re Attorney's Fees in part. In doing so, the Court stated that:

IT IS ORDERED THAT the Clerk of the Court is hereby directed and ordered to correct and re-distribute the judgment consistent with the Memorandum Decision and Order [Re: Plaintiff's Motion for Attorney's

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1 Fees at Docket 125] entered at Docket No. 168 awarding attorney's fees
2 against Kanag'Iq Construction Co. only.

3 Order, p. 8 [Docket 192].

4 Once the corrected judgment is issued, there will be an automatic stay of execution
5 for ten days pursuant to Federal Rule of Civil Procedure 62(a), which provides: "except as
6 stated in this rule, no execution may issue on a judgment, nor may any proceedings be
7 taken to enforce it, until 10 days have passed after its entry." Fed. R. Civ. P. 62(a). See
8 also, Elliott Assoc., L.P. v. Banco De La Nacion, 2000 WL 1449862 (S.D.N.Y.). With
9 regard to stay of execution of an amended judgment, the court in Elliott stated:

10 Rule 62(a) does not make any reference to amended judgments, nor has [the]
11 Court found any prior decision addressing this question. Yet regardless of
12 the fact that the forthcoming amended judgment supersedes a prior
13 judgment, it still constitutes a "judgment," *see Wikoff v. Vanderveld*, 897
14 F.2d 232, 236 (7th Cir. 1990). As such, the amended judgment will trigger
15 Rule 62(a), so that a ten-day stay of execution must be granted in the
16 attached second amended order of execution.

17 Id. at *[5]. This automatic stay would also allow Kanag'Iq Construction Company, Inc.
18 time to work out the issue of additional security, if needed, for the corrected judgment.

19 It defies common sense to have a window between stays during which a writ of
20 execution could be issued based upon an erroneous judgment.

21 For these reasons, Plaintiff's Request for Issuance of Writ of Execution must be
22 denied.

1 DATED at Anchorage, Alaska this 13th day of August, 2008.

2 EIDE & GINGRAS, P.C.
3 Attorneys for Defendants
4 Kanag'Iq Construction Co., Inc. and
5 Western Surety Company

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14 CERTIFICATE OF SERVICE

15 I am a legal secretary employed by the law
16 firm of Eide & Gingras, P.C. That on this
17 13th day of August, 2008, I served

18 [x] Electronically

19 a true and accurate copy of the foregoing
20 document upon the following counsel of record:

21 Sarah J. Tugman, Esq.
22 2509 Eide Street, Suite 4
23 Anchorage, AK 99503

24 EIDE & GINGRAS, P.C.

25 By: /s/Donna Charter

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